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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 v.

15 HOMEAWAY.COM, INC.,

16 Defendant.  
17

Case No. 2:22-cv-02578-FLA (JPRx)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND [DKT. 16]**

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19 **RULING**

20 Before the court is the Motion to Remand ("Motion") filed by Plaintiff the  
21 People of the State of California ("Plaintiff," "People," or "State"), acting by and  
22 through the Los Angeles City Attorney. Dkt. 16 ("Mot."). Defendant  
23 HomeAway.com, Inc. ("Defendant" or "HomeAway") opposes the Motion. Dkt. 17  
24 ("Opp'n"). Plaintiff filed a Reply. Dkt. 18 ("Reply").

25 On June 29, 2022, the court found this matter appropriate for resolution without  
26 oral argument and vacated the hearing set for July 8, 2022. Dkt. 19; *see* Fed. R. Civ.  
27 P. 78(b); Local Rule 7-15. For the reasons stated herein, the court GRANTS the  
28 Motion and REMANDS the action to the Los Angeles County Superior Court.

## **BACKGROUND**

In 2018, the City of Los Angeles (“the City”) adopted a short-term rental<sup>1</sup> ordinance (“the Ordinance”) that “prohibits hosting platforms from processing short-term rental booking transactions for hosts who have not registered with the City.” Dkt. 1-2 (“Compl.”) ¶ 1; L.A. Mun. Code (“LAMC”) § 12.22(A)(32)(d). The Ordinance was the City’s response to an “extreme shortage of housing,” as well as increased rents and nuisance activity in the City’s residential neighborhoods. Compl. ¶ 1.

Defendant HomeAway alleges it is “one of the leading Internet-based short-term rental hosting platforms.” *Id.* On March 18, 2022, Plaintiff, through the Los Angeles City Attorney, filed its Complaint in the Los Angeles County Superior Court alleging HomeAway violated the Ordinance by booking transactions involving short-term rental properties for hosts who were not registered with the City. Mot. at 6. The Complaint asserts two claims against HomeAway for violations of (1) California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, and (2) the City’s public nuisance code, LAMC § 11.00(l). Compl. ¶¶ 37-45. Plaintiff seeks civil penalties and an injunction for these alleged violations. *Id.* at 11; Mot. at 6.

On April 18, 2022, HomeAway removed the action to this court based on diversity jurisdiction. Dkt. 1 (“Notice of Removal”) at 5-9. Plaintiff now seeks to remand the action based on a lack of complete diversity. *See generally* Mot.

## **DISCUSSION**

### **I. Legal Standard**

A defendant may remove an action from state court if the plaintiff could have originally filed the action in federal court. *See* 28 U.S.C. § 1441(a). Under 28 U.S.C. § 1332, a district court has original jurisdiction over a civil action where (1) the

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<sup>1</sup> The Complaint identifies short-term rentals as property rentals of thirty consecutive days or fewer. Compl. ¶ 1.

1 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and  
 2 costs, and (2) the dispute is between “citizens of different States.”

3 “The removal statute is strictly construed against removal jurisdiction, and the  
 4 burden of establishing federal jurisdiction falls to the party invoking the statute.”  
 5 *Acad. of Country Music v. Cont’l Cas. Co.*, 991 F.3d 1059, 1061 (9th Cir. 2021)  
 6 (quotations omitted). “Federal jurisdiction must be rejected if there is any doubt as to  
 7 the right of removal in the first instance.” *Id.*

## 8 **II. Analysis**

9 The parties’ dispute concerns only the complete diversity of citizenship  
 10 requirement—specifically, whether the real party in interest is the State, as Plaintiff  
 11 contends, or the City, as Defendant claims.<sup>2</sup>

12 When determining the real party in interest for diversity purposes, courts first  
 13 look to the face of the complaint. *Miller v. Grgurich*, 763 F.2d 372, 373 (9th Cir.  
 14 1985) (“The diversity upon which removal is predicated must be complete, and should  
 15 generally be determined from the face of the complaint.”) (citations omitted). Here,  
 16 the Complaint states that the People are the Plaintiff in this action. Compl. ¶ 2.

17 “For the purposes of diversity jurisdiction, a State is not a citizen of itself,” and  
 18 “neither a state nor a state agency [can] be a party to a diversity action.” *Dep’t of Fair*  
 19 *Emp. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 737 (9th Cir. 2011) (quotations  
 20 omitted). Ordinarily, “a State’s presence as a party will destroy complete diversity.”  
 21 *See Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 174 (2014).

22 “Nevertheless, the mere presence on the record of the state as a party plaintiff  
 23 will not defeat the jurisdiction of the Federal court when it appears that the state has  
 24 no real interest in the controversy.” *Lucent*, 642 F.3d at 737 (quotations omitted). As  
 25 a result, a court must “look behind the pleadings” and identify the real party in interest  
 26 in the lawsuit. *Mississippi ex rel. Hood*, 571 U.S. at 174. To determine whether a  
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28 <sup>2</sup> The parties agree the amount in controversy requirement is satisfied. Mot. at 7 n. 3.

1 state is the real party in interest, courts examine “the essential nature and effect of the  
2 proceeding as it appears from the entire record” and decide whether the state “has a  
3 specific, concrete interest” in the litigation. *Nevada v. Bank of Am. Corp.*, 672 F.3d  
4 661, 670 (9th Cir. 2012). Stated differently, “the overall test is whether the  
5 government official or entity’s lawsuit would primarily vindicate state interests and  
6 primarily obtain relief for the state, rather than serving primarily parochial interests  
7 and obtaining parochial relief.” *In re Facebook, Inc., Consumer Priv. User Profile*  
8 *Litig.*, 354 F. Supp. 3d 1122, 1129 (N.D. Cal. 2019).

9 Here, the court finds that the State is the real party in interest for several  
10 reasons. First, the California legislature authorized city attorneys of cities with  
11 populations exceeding 750,000 within the State, such as Los Angeles, to bring civil  
12 enforcement actions on behalf of the People. Cal. Bus. & Prof. Code § 17204. Both  
13 the California Supreme Court and the Ninth Circuit have confirmed that “a civil action  
14 brought by a governmental entity under [Cal. Bus. & Prof. Code §] 17200 is  
15 ‘fundamentally a law enforcement action designed to protect the public and not to  
16 benefit private parties.’” *See City & County of San Francisco v. PG & E Corp.*, 433  
17 F.3d 1115, 1125-26 (9th Cir. 2006) (quoting *People v. Pac. Land Rsch. Co.*, 20 Cal.  
18 3d 10, 17 (1977)). The public has a substantial and specific interest in enforcing  
19 consumer protection laws. *See Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971)  
20 (“Protection of unwary consumers from being duped by unscrupulous sellers is an  
21 exigency of the utmost priority in contemporary society.”), *superseded by statute on*  
22 *other grounds as stated in Flores v. Southcoast Auto. Liquidators, Inc.*, 17 Cal. App.  
23 5th 841, 851 (2017).

24 Second, Plaintiff seeks relief for the State in the form of statutory penalties and  
25 an injunction under the UCL. Defendant argues that because Plaintiff predicates its  
26 UCL claim upon the Ordinance, any relief sought in this action is limited to the City  
27 and not the State as a whole, and thus remand is improper because the City is the real  
28 party in interest. Opp’n at 16-18. The court disagrees.

1 An action under the UCL may “borrow[] violations of other laws and treat[]  
2 these violations, when committed pursuant to business activity, as unlawful practices  
3 independently actionable under section 17200 et seq. and subject to the distinct  
4 remedies provided thereunder.” *Farmers Ins. Exch. V. Super. Ct.*, 2 Cal. 4th 377, 383  
5 (1992). That Plaintiff’s UCL claim “borrows” the substance of the Ordinance does  
6 not make Defendant’s alleged business practices any less unlawful, unfair, or  
7 fraudulent. *See* Cal. Bus. & Prof. Code § 17200 (prohibiting “any unlawful, unfair or  
8 fraudulent business act or practice”). Similarly, the fact that the relief sought in this  
9 action would primarily benefit the City, as opposed to the State, is not dispositive of  
10 the real party in interest.

11 Plaintiff concedes that “one-half of any civil penalties ultimately recovered  
12 under the UCL must be paid to the City’s treasury with the other half paid to the  
13 County of Los Angeles.” Mot. at 11. However, Plaintiff notes that “pursuant to State  
14 law, all such civil penalties must be exclusively (and uniquely) devoted to advance a  
15 State interest—the enforcement of consumer protection laws.” *Id.* (citing Cal. Bus. &  
16 Prof. Code § 17206(c)(4)).

17 Several courts within this Circuit have remanded actions where monetary  
18 damages flowed to a specific municipality rather than the State as a whole. *See In re*  
19 *Facebook, Inc.*, 354 F. Supp. 3d at 1134 (“[T]he purpose of a civil penalty is not to  
20 compensate a victim but to punish the wrongdoer and deter future wrongdoing by  
21 others. Thus, from a punishment and deterrence standpoint, it serves the interests of  
22 the statute ... equally whether the penalties end up in [the] state or county treasury.”);  
23 *see California v. Purdue Pharma L.P.*, Case No. 8:14-cv-01080-JLS (DFMx), 2014  
24 WL 6065907, at \*3 (C.D. Cal. Nov. 12, 2014) (granting motion to remand and finding  
25 it “immaterial” that damages for civil penalties flowed to individual counties and not  
26 the State in UCL action because “any recovery may be used only for the future  
27 enforcement of California’s consumer protection laws, thereby furthering the interests  
28 of the State, not the Counties.”); *see also County of Santa Clara v. Wang*, Case No.

1 5:20-cv-05823-EJD, 2020 WL 8614186, at \*2 (N.D. Cal. Sept. 1, 2020) (finding the  
2 State to be the real party in interest in a public nuisance action brought jointly with  
3 Santa Clara County). This court agrees and holds it is immaterial that the City would  
4 receive relief in this action because such relief would be dedicated to enforcing the  
5 State's consumer protection laws, and advance the interests of the State.

6 Third, both parties point to separate Ninth Circuit decisions in support of their  
7 respective positions. Defendant claims that *Lucent* supports the denial of Plaintiff's  
8 Motion. In *Lucent*, California's Department of Fair Employment and Housing sued  
9 an out-of-state company in state court on behalf of one of the company's employees.  
10 *Lucent*, 642 F.3d at 735. The complaint sought monetary relief and other remedies for  
11 the employee, who was labeled the real party in interest. *Id.* at 735, 739 n. 8. After  
12 the district court denied the plaintiff's motion to remand, the Ninth Circuit affirmed,  
13 finding that the employee was the real party in interest because the lawsuit would  
14 vindicate his individual rights, rather than the rights of the citizens of the State. *Id.* at  
15 738-39.

16 Conversely, Plaintiff claims that *Nevada* controls. In *Nevada*, the state's  
17 attorney general sued Bank of America for allegedly misleading Nevada consumers  
18 about mortgage and foreclosure procedures in violation of Nevada's consumer  
19 protection law. *Nevada*, 672 F.3d at 665. To determine whether the state was the real  
20 party in interest, the Ninth Circuit distinguished *Lucent*, noting that while the plaintiff  
21 in *Lucent* sought relief for a single employee, "here, the Nevada Attorney General  
22 sued to protect the hundreds of thousands of homeowners in the state allegedly  
23 deceived by Bank of America, as well as those affected by the impact of Bank of  
24 America's alleged frauds on Nevada's economy." *Id.* at 670. The Ninth Circuit found  
25 Nevada to be the real party in interest, and thus remand was necessary. *Id.* at 670-72.

26 In this case, the court finds the facts alleged analogous to *Nevada*. Unlike  
27 *Lucent*, Plaintiff does not seek relief for a single individual. Rather, Plaintiff "seeks to  
28 protect the general public from Defendant's business practices that contribute to a

1 statewide housing crisis.” Mot. at 15. Further, like *Nevada*, Plaintiff has a specific,  
2 concrete interest in “the economic well-being of its citizens during a housing crisis by  
3 securing a marketplace free from unlawful business practices that reduce the  
4 availability of long-term housing and contribute to increased rents.” *Id.* at 10.

5 Finally, “[f]ederal jurisdiction must be rejected if there is any doubt as to the  
6 right of removal in the first instance.” *Acad. of Country Music*, 991 F.3d at 1061  
7 (quotations omitted). Plaintiff’s arguments are sufficient to raise doubts as to whether  
8 removal based on diversity jurisdiction was proper.


9 Accordingly, Plaintiff’s Motion is GRANTED.

10 **CONCLUSION**

11 For the foregoing reasons, the court GRANTS Plaintiff’s Motion to Remand.  
12 The court REMANDS this action to the Los Angeles County Superior Court, Case  
13 Number 22STCV09609. The Clerk of the Court shall administratively close the case.  
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15 IT IS SO ORDERED.

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17 Dated: March 14, 2023

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19 FERNANDO L. AENLLE-ROCHA  
20 United States District Judge  
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